IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

1.SECOND APPEAL NO.354 OF 1985

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Divyangnakumari Harisinh Parmar
2. Ramaben Mohansinh Parmar
3. Lala Parag
(since deceased through L.Rs.)
3A.Shri Umedsinh Lalabhai Solanki
3B.Shri Bharatsinh Lalabhai Solani
4. Takhatsinh Kalidas
5. Mohan Pratap
6. Dahya Govan
(since deceased through L.Rs.)
6A.Smt.Narbadaben w/o Dahyabhai Patel
(since deceased through L.Rs. already
on record being 6B to 6K)
6B. Damubhai Dahyabhai
6C. Prabhubhai Dahyabhai
6D. Vasantbhai Dahyabhai
6E. Amrutbhai Dahyabhai Patel
6F. Vijaybhai Dahyabhai Patel
6G. Gajeshbhai Dahyabhai Patel
6H. Smt.Paliben Dahyabhai Patel
6I. Smt.Revaben Dahyabhai Patel
6J. Smt.Urmilaben Dahyabhai
6K. Smt.Lataben Dahyabhai Patel
7. Nandkishor Lallubhai Patel
8. Bhana Mangal Ukabhai
9. Chhotu Jivan
10. Bai Bhuli Uka
(since deceased through L.Rs.)
10A. Fatesinh Kalidas Solani
10B. Harishinh Kalidas
10C. Laxmansinh Kalidas
10D. Taihatsinh Kalidas
11. Ranjitsinh Sitaram Desai
(since deceased through L.Rs.)

11A. Shri Amrutsinh
11B. Shaileshsinh
12. Abhesinh Himatsinh
13. Rapainh Himatsinh
14. Ashok Rupsinh through
Power of Attorney Rupsinh Pratapsinh
15. Rajendrasinh Rupsinh
16. Mahendrasinh
17. Pratapsinh Vallabh
(since deceased through L.Rs.)
17A. Shri Jitendrasinh
17B. Shri Hitendrasinh
17C. Shri Natwarsinh
17D. Smt.Savitaben
17E. Smt.Pushpaben
17F. Padmaben
18. Pravinsinh Lalsinh Parmar
19. Smt.Maniben Jaisinh
(since deceased through L.Rs.)
19A. Smt.Chandanben wd/o Chitusinh
19B. Chandrasinh Chhitusinh Chauhan
19C. Surendrasinh Chhitusinh Chauhan
19D. Harendrasinh Chhitusinh Chauhan
20. Smt.Naliniben Shrikrishna Dalvi
21. Smt.Neenakumari Harisinh Parmar
22. Smt.Maliben Dahyabhai Solanki
23. Laxman Bhana Solanki
24. Harisinh Mohansinh Solanki
25. Umedainh Bhanabhai Solanki
26. Premabhai Bavabhai Solanki
(since deceased through L.Rs.)
26A. Chhibubhai
26B. Prabhatsinh
27. Mohansinh Chhotusinh Parmar
(since deceased through L.Rs.)
27A. Smt.Ramaben Wd./o Mohansinh
27B. Smt.Sarojben
27C. Jitendrasinh
27D. Surendrasinh
27E. Smt.Sulochanaben
27F. Ashwinbhai
28. Pratapsinh Lalsinh Solanki
(since deceased through L.Rs.)
28A. Smt.Deviben Wd./o Pratapsinh
29. Gomansinh Lalsinh Solani ...Respondents

WITH

2.**SECOND APPEAL NO.355 OF 1985**

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor

of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Mohanlal Naranji
2. Navinchandra Chunilal
3. Khandubhai Rambhai
(since deceased by L.Rs.)
3/1 Bhikubhai Khandubhai Desai
3/2 Kikubhai Khandubhai Desai
3/2A Prakashbhai
3/2B Rajeshbhai
3/2C Rajnikant
3/2D Malankumar
3/2E Smt.Nitaben
3/3 Ratilal Khandubhai Desai
3/4 Sumanbhai Khandubhai Desai
3/5 Smt.Ramilaben Khandubhai Desai
4. Natwarlal Vanmalidas Bhavsar
4/A Nitinbhai
4/B Rajendrabhai
4/C Bankimbhai
4/D Smt.Daxaben
5. Paragbhai Dajibhai Patel
(since deceased through L.Rs.)
5/1 Bhagubhai
5/2 Natwarlal
5/3 Smt.Maniben
5/4 Keshavbhai Kalyan
(since deceased through L.Rs.)
5/4 (1) Mohanbhai Keshavbhai Patel
5/4(2) Parsottam Gajanand Patel
6. Nagarbhai Zinbhai Kapdi
6/1 Satishchandra
6/2 Smt.Kusumben
6/3 Kum.Minaxiben
6/4 Smt.Nirmalaben
6/5 Smt.Jyotiben Maheshbhai Tamboli
7. Premabhai Bhikhabhai Patel
7/1 Ranchodbhai
7/1A Harshadbhai
7/1B Mahendrabhai
7/1C Smt.Vasantiben
7/1D Smt.Daxaben
7/2 Lakhubhai
7/3 Govindbhai
7/4 Smt.Maniben
7/5 Smt.Dhaniben
7/6 Smt.Jashodaben
7/7 Smt.Hanshaben
8. Khalpabhai Govanbhai

(since deceased through L.Rs.)
8/1 Jamshu Govanbhai
8/2 Keshav Govanbhai
(since deceased through L.R.)
8/2A Mohanbhai Keshavbhai Patel
9. Gandabhai Dhediabhai
(since deceased through L.Rs.)
9/1 Premabhai
9/2 Hirabhai
9/3 Uttambhai
9/4 Arvindbhai
9/5 Smt.Kamuben
9/6 Smt.Meenaben
10. Shah Kasturchand
(since deceased through L.Rs.)
10/1 Chimanlal Kasturchand Shah
10/2 Amrutlal Kasturchand Shah ....Respondents

WITH
3.SECOND APPEAL NO.356 OF 1985

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Amratlal Lallubhai
(since deceased through L.Rs.)
1/1 Smt.Chandaben Wd/of Amratbhai L.Patel
1/2 Smt.Parvatiben
1/3 Pravinbhai
1/4 Smt.Chandraprabha
1/5 Smt.Anshuyaben
1/6 Smt.Lataben
1/7 Smt.Naliniben
1/8 Smt.Nirmalaben
1/9 Hiteshbhai
2. Kevalchand Dhanraj Shah
3. Ranchhodbhai Govanbhai
(since deceased through L.Rs.)
3/1 Smt.Gulatben W/d of Ranchhodbhai
3/2 Ishwerbhai
3/3 Surendrasinh
3/4 Jagdishsinh
4. Dhikhubhai Gomanbhai, Naroli
5. Chhaoanbhai Kikabhai Chauhan
(since deceased through L.Rs.)
5/1 Smt.Saraswatiben

5/2 Vikramsinh
5/3 Natubhai
6. Moreshwar Bapu Vaid
6/1 Sureshbhai
(since deceased through L.Rs.)
6/1A Ritaben
6/1B Linaben
6/1C Binaben
6/1D Reshmaben
6/1E Meghnaben
6/2 Arvindbhai
6/3 Smt.Ashwiniben
6/4 Smt.Aparnaben
7. Shantilal Premchand
8. Keshavbhai Govanbhai Patel
8/1 Mohanbhai Keshavbhai Patel
9. Kalanbhai Govanbhai Patel
9/1 Thakorebhai
9/2 Smt.Nirmalaben
9/3 Smt.Ushaben
9/4 Smt.Hanshaben
10. Haribhai Madhubhai
11. Bhanabhai Mangalbhai Parmar
12. Ramabhai Morarbhai
(since deceased through L.Rs.)
12/1 Natubhai
12/2 Jashvantbhai
12/3 Harisinh
12/4 Smt.Chanchalben
12/5 Smt.Manjulaben ...Respondents

WITH

4.**SECOND APPEAL NO.357 OF 1985**

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Smt.Laxmibai Ganesh Dandekar
(since deceased through L.Rs.)
1/1 Sitabai Raghunath Thosar
(since deceased through L.Rs.)
1/1A Gangadhar Raghunathji Thosar
1/1B Smt.Sulbhaben Haribhao Gokhale
1/1C Pramilaben Laxman Gadre
1/1D Hemlataben Janardan Joshi

1/1E Vandanaben Mulighar Khare

2. Smt.Radhaben Krishnaji
(since deceased through L.Rs.)
2/1 Smt.Kundaben Marathi
2/2 Smt.Anandibai Digamber Kelkar
2/3 Smt.Indiraben Krishnaji Karmarkar
2/4 Smt.Kamlaben Vishnubhai Joshi
3. Smt.Sitabai Raghunathji
(since deceased through L.Rs.
already on record as 1/1A to 1/1E) ....Respondents

WITH
5.SECOND APPEAL NO.358 OF 1985

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Smt.Maniben Gulassinh Parmar
(since deceased through L.Rs.)
1/1 Ishwarsinh Gulabsinh Parmar
1/2 Harendrasinh Gulabsinh Parmar
1/3 Smt.Laxmiben Narpatsinh Mangrolia
1/4 Smt.Harigangaben Indrasinh Vasiya
1/5 Smt.Narmadaben Kishorsinh Rathod
1/6 Smt.Bhadraben Bharatsinh Chauhan
1/7 Smt.Indiraben Jagdishsinh
2. Mohansinh Laxmansinh Solanki
3. Ramubhai Laxmansinh Solanki
4. Babubhai Laxmansinh Solanki
5. Mohansinh Ratanji Solanki
(since deceased through L.Rs.)
5/1 Bhikhubhai Mohansinh Solanki
6. Smt.Dahiben Chhibabhai
7. Narsinh Ramabhai Solanki
(since died through L.Rs.)
7/1 Smt.Jashodaben Wd/o Narsinh Solanki
7/2 Rameshchandra Narsinh Solanki
(since deceased through L.Rs.)
7/2A Smt.Vinuben Wd./of Rameshchandra
7/2B Jyotiben Rameshchandra
7/2C Manishaben Shailendrasinh Desai
7/2D Sulochanaben Rameshchandra Solanki
7/3 Harendrasinh Narsinh Solanki
8. Balvantsinh Bhikhubhai Rathod
9. Bai Kamlaben Wd/of Bhikhubhai V.Rathod

10. Bai Surajben Wd/of Virsinh Z.Rathod
10/1 Bhikhubhai Virsinh Rathod
(since deceased through L.Rs.)
10/1A Kamlaben
10/1B Balvantsinh
10/1C Laxmiben
10/1D Bhaniben
10/1E Deviben
10/1F Manjulaben
10/1G Maniben
11. Surendrasinh Chhittusinh Chauhan
12. Smt.Chandaben Chittusinh Chauhan
13. Pratapsinh Vallabhabhai Desai
(since deceased through L.Rs.)
13/1 Jitendrasinh
13/2 Harendrasinh
13/3 Natwarsinh
13/4 Smt.Savitaben
13/5 Smt.Pushpaben
13/6 Smt.Padmaben
14. Ramsinh Narsinh Desai
14/1 Smt.Chandanben W/d of Ramsinh
14/2 Rajendrasinh
14/3 Smt.Virmatiben
14/4 Smt.Pratibhaben
14/5 Smt.Madhubalaben
14/6 Smt.Pravinaben
15. Motisinh Narsinh Desai
16. Dalpatsinh Kalidas Desai
17. Kalidas Hirabhai Desai
17/1 Smt.Devkiben Kalidas
17/2 Babubhai
17/3 Mohansinh
17/4 Mahendrasinh
17/5 Dalpatsinh @ Devendrasinh
17/6 Smt.Tejuben
17/7 Smt.Savitaben
17/8 Smt.Dhanuben
17/9 Smt.Sarojben
17/10 Smt.Kanchanben
18. Mohansinh Kalidas Desai
19. Bai Ganga Wd./of Khandu Hira
(since deceased through L.Rs.)
19/1 Smt.Shantaben
(since deceased through L.Rs.)
19/1A Mahendrasinh
19/1B Ishwarsinh
19/1C Smt.Hiraben
19/1D Smt.Kusumben
19/1E Smt.Savitaben
19/1F Smt.Vasantiben
20. Bhagwansinh Govindsinh Parmar
(since deceased through L.Rs.)

20/1 Mahendrasinh
20/2 Rajendrasinh
20/3 Smt.Bhaniben
20/4 Smt.Gitaben
21. Ranchhodbhai Govinbhai Parmar
21/1 Ishwarsinh
21/2 Surendrasinh
21/3 Jagdishbhai
21/4 Smt.Deviben Wd/of Ranchhodbhai
22. Thakorebhai Govanbhai Parmar
23. Dalpatbhai Govanbhai Parmar
24. Bai Deviben Wd/of Govanbhai Jaisinh
(since deceased through L.Rs. already on
record as 21/1 to 21/3)
25. Harisinh Morarsinh Parmar
(since deceased through L.Rs.)
25/1 Smt.Valiben Wd/of Harisinh Parmar
25/2 Dalpatsinh
25/3 Smt.Shardaben
25/4 Mohansinh
25/5 Smt.Vinuben
26. Laxmansinh Morarbhai Parmar
27. Bhikhubhai Gomansinh Parmar
28. Umedsinh Bhikhubhai Parmar
(since deceased through L.Rs.)
28/1 Babubhai Ramsinh
28/2 Natwarsinh Ramsinh
29. Ramsinh Bhikhabhai Parmar
29/1 Smt.Nagniben Wd/of Ramsinh
29/2 Babubhai
29/3 Natwarsinh
29/4 Smt.Virmatiben
29/5 Smt.Naynaben
29/6 Smt.Bhartiben
29/7 Smt.Kanchanben
30. Bhikhubhai Mohanbhai Parmar
(since died through L.Rs.)
30/1 Smt.Kamlaben
30/2 Kalpeshkumar
30/3 Smt.Kanchanben
30/4 Smt.Kushumben
30/5 Smt.Nitaben
30/6 Smt.Rajeshreeben
31. Bhanabhai Danabhai Chauhan
(since deceased through L.Rs.)
31/1 Chhibubhai
31/2 Dalpatsinh
31/3 Arvindsinh
31/4 Natwarsinh
31/5 Shaileshsinh
32. Abhubhai Danabhai Chauhan
33. Bai Saraswatiben Wd./of Vinayak A. Chaubal
(since deceased through L.Rs.)

33/1 Sudhaben
33/2 Nilimaben .....Respondents

WITH

6.SECOND APPEAL NO.359 OF 1985

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Okchand Premchand
(since deceased through L.Rs.)
1/1 Smt.Patashiben Wd./of Okchand Premchand
1/2 Rameshbhai
1/3 Javantibhai
1/4 Ashokbhai
1/5 Manharbhai
1/6 Harshadbhai
1/7 Smt.Ranjanben
1/8 Smt.Lilaben
2. Chunilal Magniram
3. Mohmadbhai
(since deceased through L.Rs.)
3/1 Rajabali
3/2 Sadruddin
3/3 Kamalbhai
3/4 Shirajbhai
3/5 Smt.Kulsumben
4. Kamluddin Mohamadbhai
5. Rajabali Mohamadbhai
6. Rustom Ardesar
(since deceased through L.Rs.)
6/1 Merwanji Rustomji Wadia
7. Abhesinh Kalidas Solanki
(since deceased through L.Rs.)
7/1 Smt.Chanchalben Wd./of Abhesinh
7/2 Natwarsinh
7/3 Dilipsinh
7/4 Smt.Nirmalaben
7/5 Smt.Shardaben
8. Takhatsinh Kalidas Solanki
9. Fatesinh Kalidas Solanki ...Respondents

WITH

7.SECOND APPEAL NO.360 OF 1985

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Lalia Motla Chauhan
(since deceased through L.Rs.)
1/1 Umedsinh Lalsinh Chauhan
1/2 Laxmansinh Lalsinh Chauhan
1/3 Smt.Umliben Lalsinh Chauhan
1/4 Smt.Dhanuben Lalsinh Chauhan
(since deceased through L.Rs.)
1/4A Shaileshbhai Babubhai Desai
1/4B Ajaykumar Babubhai Desai
1/4C Anilkumar Babubhai Desai
2. Chhibubhai Umedsinh
(since deceased through L.Rs.)
2/1 Smt.Surajben Wd/of Chhibu Umed
2/2 Ukhadbhai Chhibubhai
2/3 Ranjitsinh Chhibubhai Chauhan
2/4 Fatesinh Chhibubhai Chauhan ...Respondents

WITH

8.**SECOND APPEAL NO.361 OF 1985**

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Shamjibhai Paragbhai
(since deceased through L.Rs.)
1/1 Smt.Surajbhen Wd./of Samjibhai P. Solanki
(since deceased through L.Rs.)
1/1A Babubhai Shamjibhai
1/1B Smt.Gulabben Mohansinh Sisodia
1/1C Smt.Virmatiben Abhesinh Solanki
1/1D Smt.Bhartiben Pravinsinh Parmar
1/2 Babubhai Shamjibhai ...Respondents

WITH

9.SECOND APPEAL NO.362 OF 1985

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Nathubhai Bhagubhai Parmar
(since deceased through L.Rs.)
1/1 Jashwantsinh @ Bhanabhai Parmar
1/2 Prabhatsinh Nathubhai Parmar
1/3 Takhatsinh Nathubhai Parmar
1/4 Surendrasinh Nathubhai Parmar
1/5 Dalpatsinh Nathubhai Parmar
1/6 Balvantsinh Nathubhai Parmar
1/7 Smt.Jashodaben Parmar
2. Prabhatsinh Jaisinh Solanki
3. Chandrasinh Jaisinh Solanki
(died on 27-11-1994, no L.R.)

4. Dhirajsinh Jaisinh Solanki ...Respondents

WITH
10.SECOND APPEAL NO.363 OF 1985

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Ramsinh Bhika Parmar
(since deceased through L.Rs.)
1/1 Bharatsinh Ramsinh
(since deceased through L.Rs.)
1/1A Rajendrasinh
1/1B Harendrasinh
1/1C Vikramsinh
1/1D Virendrasinh
1/1E Smt.Bhartiben
1/1F Smt.Shakuntalaben
1/1G Smt.Padmaben Wd/of Bharatsinh
1/2 Smt.Pratimaben Wd./of Takhatsinh
1/3 Smt.Binakumari Takhatsinh Parmar
1/4 Rakeshkumar Takhatsinh Parmar
1/5 Kalpeshkumar Takhatsinh Parmar

2. Vallabhbhai Mangalbhai Parmar
3. Manilal Govindji Rathod
(died on 17-6-1987, no L.Rs.)
4. Chhibabhai Gopalbhai Parmar
5. Chhotubhai Nagarbhai Parmar
(since deceased through L.Rs.)
5/1 Ghambhirsinh
6. Laxmanbhai P. Parmar
(since deceased through L.Rs.)
6/1 Jitendrasinh
6/2 Smt.Chanchalben
6/3 Smt.Lataben
6/4 Smt.Ramilaben
7. Dahyabhai Parsot Parmar
8. Natubhai Parsot Parmar

WITH

11. **SECOND APPEAL NO.364 OF 1985**

1. Union of India
2. The Administration of Dadra
and Nagar Haveli administered
by Lt.Governor and Administrtor
of Dadra and Nagar Haveli at Silvassa
3. The Collector of Dadra and Nagar
Haveli at Silvassa. ...Appellants

vs.

1. Mangilal Chandanmalji Shah ...Respondent

Mr.R.M.Agarwal for the Appellants

Mr.V.Z.Kankaria for Respondents in all the Second Appeals
except Second Appeal No.356 of 1985.

Mr.V.A.Gangal with Mr.Harshad Deshpande for Respondent Nos.6, 6/1A, 6/1B, 6/1C, 6/1D, 6/1E, 6/2 and 6/3 in Second Appeal No.356 of 1985

CORAM : A. S. OKA,J.
DATED : FEBRUARY 11,15,16,17,2005

ORAL JUDGMENT :

1. These Second Appeals were admitted by order dated 5th September 1985 by observing that the Appeals are admitted on grounds (a) to (e). Though substantial questions of law were not specifically framed at the time of admission of the Second Appeals, it is obvious that this Court was of the view that

grounds (a) to (e) raised substantial questions of law.

Grounds (a) to (e) read thus :-

(a) That the substantial question of law would be when the learned District Judge came to the conclusion that it was not open to the Respondents to contend that the lands were not cultivable at the time of grant of the contract of concession whether it was still proper on the part of the learned District Judge to set aside the orders of the Collector dated 19-6-1978 in view of the above finding.

(b) That the substantial question of law would be when the learned District Judge came to the conclusion that the Respondents were not entitled to plead impossibility of compliance of the material terms of the contract of concession whether it was proper on the part of the learned District Judge to hold that still the order of the Collector dated 19-6-1978 will be assailable.

(c) That the substantial question of law would be that in view of Article 29 of the relevant provisions of Agrarian Law which clearly lays down that the proprietary rights of the State are imprescriptible whether it was right on the part of the learned District Judge to hold that in view of acquiescence and/or latches, the Collector could not take action for the default committed after a period of about 40 years.

(d) That the substantial question of law would be when the law of limitation nowhere puts any bar for taking an action whether it was proper on the part of the learned District Judge to quash the orders of the Collector taken in accordance with law under the cloak of acquiescence.

(e) That the substantial question of law would be whether it was open to the Respondents to advance an altogether new plea in the civil suit when as a matter of fact the only grounds on which the earlier orders of Collector were agitated before the High

Court only on the ground of non-compliance of principles of natural justice, such as, giving hearing before passing the order under challenge and when on merits the learned District Judge did not find any fault with the order of the Collector whether it was permissible for the learned District Judge to set aside the said order on a plea that same would be hit by the factum of delay and/or acquiescence when there is no such legal bar.

2. I have heard Shri Agrawal for the Appellants in all the Second Appeals. I have also heard Shri Kankaria for the Respondents in some of the Second Appeals and Shri Gangal for the Respondents in one Second Appeal. Before referring to the submissions which are made extensively before me, it will be necessary to refer to the broad facts of the cases.

3. The Appeals are filed by Union of India and the Administration of Dadra and Nagar Haveli. The Collector of Dadra and Nagar Haveli is the Appellant no.3. The Appellants are original Defendants and the Respondents are original Plaintiffs.

4. Second Appeals relate to the lands situated in the Union Territory of Dadra and Nagar Haveli. The Respondents are the allotees of lands known as Alwara lands during the Portuguese regime. The area of Dadra and Nagar Haveli was freed from Portuguese regime in the year 1954. The lands have been granted to the Respondents and their predecessors during the period between 1922 and 1930. In the year 1969 the Collector

exercised power of the Administrator and forfeited the lands allotted to the Respondents on account of their failure to cultivate the same. The power was exercised under the Agrarian Law applicable to Dadra and Nagar Haveli which was known as ‘Organizacao Agraria’ (hereinafter referred to as "the Agrarian law"). The orders passed by the Collector were challenged by the Respondents by filing Special Civil Application No.2080 of 1969 and other connected Special Civil Applications. A Division Bench of this Court by Judgment and Order dated 17th July 1973 allowed the said Petitions and the orders passed by the Collector were quashed. It was further observed that the quashing of the orders will not affect the right of the Collector to take appropriate action under Article 12 of the Agrarian law after giving a fair and reasonable opportunity to the Petitioners. On the basis of the said order, notices were issued to the Respondents by the Collector calling upon them to show cause as to why the lands should not be forfeited. After giving them an opportunity to file reply and after giving hearing to them, on 30th April 1974, the Collector passed a common order by which Alwara lands of the Respondents were forfeited. Therefore, the Respondents in these Second Appeals filed separate suits in the Court of Civil Judge, Dadra & Nagra Haveli and Silvassa. The said suits were for declaration that the impugned orders of forfeiture passed by the Collector are arbitrary, malafide,illegal and void. The suits filed by the Respondents were decreed by the Trial Court. The Appeals preferred by the

present Appellants i.e. Union of India and Administration of Dadra and Nagar Haveli were dismissed by the Appellate Court by a common Judgment.

5. The Trial Court held that the conditions attached to Alwara lands of each of the Plaintiffs were either fulfilled or the defaults were condoned during the Portuguese regime. The trial Court also held that there was a waiver of the conditions on the part of the Portuguese administration. The learned Trial Judge recorded a finding that though the Agrarian law speaks of granting concession to use the Alwara lands, the rights granted in respect of Alwara lands in favour of the Plaintiffs are occupancy rights including right to create mortgage, right to cultivate and right to continue in possession on payment of fixed assessment. The Appellate Court held that it was not open for the Plaintiffs to contend that the lands were not cultivable at the time of granting contract of concession and that it was not open for the Plaintiffs to plead impossibility of compliance of the material terms of contract of concession. The Appellate Court however held that their was implied consent on the part of the Authorities about the violation of material conditions of the contract of concession. The Appellate Court also held that there was acquiescence on the part of the Appellants. The Appellate Court also held that there cannot be any condonation but inference of acquiescence can be drawn because there was implied consent as a result of long inaction on the part of

the Authorities.

6. Shri R.M.Agrawal, learned Counsel for the Appellants in all the Appeals has made extensive submissions. He submitted that apart from the grounds (a) to (e) of the Memorandum of Appeal, five substantial questions of law arise :

(a) The substantial question of law would be whether it would be right to hold that forfeiture of the Alwara lands held by the Respondents was bad in law when admittedly there is a breach of Article 12 and when there is no limitation prescribed in that regard ?

(b) The substantial question of law would be whether the principles of waiver, estoppel and/or acquiescence could be applied in the instant cases when admittedly the State acts through human agency and when no direct clinching evidence is led to attribute either waiver or estoppel or acquiescence ? Moreover, as held by the Apex Court in AIR 1977 S.C. 1691 - to take the plea of waiver against the Government is an uphill task.

(c) The substantial question of law would be whether in the light of the Judgment reported in 1996 (5) Bom.C.R., page 405, which is the Judgment delivered by a Bench presided over by Justice Kamat, whether the courts below can be said to be correct in allowing the claim of the Respondents.

(d) That in view of Article 27, even when forfeiture is effected under the provisions, no compensation is required to be paid and in that view of the matter also the substantial question of law would be whether the courts below are right in upholding the claim of the Respondents ?

(e) The substantial question of law would be as to in view of provision of Section 13 of the C.P.C. what would be the evidentiary value and admissibility of the Judgment of the

Supreme Court of Lisbon at Exh.51, which will have bearing in its own case and the reasoning given therein can hardly be of any avail to the Respondents, who are not the party to the said suit.

He submitted that there cannot be any estoppel against the statute. He relied upon the various Judgments of the Apex Court and this Court in support of his submissions. He submitted that the plea of acquiescence was not pleaded by the Respondents-Plaintiffs in the Trial Court and the same has been raised for the first time in the Appeal in the District court. He submitted that in any event there was nothing on record to prove the acquiescence. In so far as finding regarding waiver is concerned, relying on various decisions of the Apex Court, he submitted that there was nothing to show that the Appellants abandoned their rights under the law to take action of forfeiture. He has relied upon various articles of the Agrarian law. I have made detailed reference to various decisions relied upon by Shri Agrawal in the later part of this Judgment. The substance of the submissions is that when a power is conferred on the Appellants to take action of forfeiture, unless it is proved that right to exercise the said power has been abandoned, there cannot be any waiver. He submitted that in Petitions filed under Article 226 of the Constitution of India against earlier orders of forfeiture passed against the Respondents/Plaintiffs, the only contention raised by the Respondents in the said Petitions was that opportunity should

have been given to the Respondents to prove that uncontrolable circumstances prevented them from complying with the terms of Article 12 of the Agrarian law. He submitted that more or less identical reply to the show cause notice was submitted by all the Plaintiffs before the Collector and the only contention raised was that the Respondents/Plaintiffs were prevented from cultivating the lands and grass was being cultivated on the same.

7. Shri Kankaria, learned Counsel for the Respondents in some of the Second Appeals has also made elaborate submissions. He relied upon the Judgment of the Supreme Court at Lisbon which is at Exh.51 in the Trial Court and submitted that the Appellants were bound by the said Judgment. He submitted that there was a grant of lands in question in favour of the Respondents. He submitted that there was no specific finding recorded by the Collector that all the Plaintiffs have committed breaches of the conditions incorporated in Article 12 of the Agrarian law. He submitted that the action of forfeiture was taken after lapse of about 50 years from the date of commission of alleged breach of conditions by the Respondents. He submitted that there was nothing on record before the Collector as to what was the position of the lands in the first 7 years after the grant. He submitted that there was no discussion by the Collector regarding different categories of lands recognised by the Agrarian law. He submitted that even assuming that there was a right of

forfeiture, the said right was waived. He has taken me through the notes of evidence on record and he supported the finding on the plea of acquiescence recorded by the learned District Judge. He submitted that the order of the Collector shows that no opportunity was given to the original Plaintiffs to submit their say on the Inspection reports relied upon by the Collector. He submitted that the orders impugned were passed by the Collector without giving a fair and reasonable opportunity to the Respondents/Plaintiffs. He submitted that the Inspection reports relied upon by the Collector were not placed on record of the Trial Court. He submitted that the orders were passed by the Collector on 30th April 1974 as the Collector knew that Dadra and Nagar Haveli Lands Reforms Regulation Act, 1971 was to be brought with effect from the next date i.e. 1st May 1974 and the Agrarian law was to stand repealed by virtue of said regulation of 1971. He submitted that not only that the order of Collector is malafide but it shows non-application of mind.

8. Shri Kankaria submitted that the Judgment of Lisbon court was binding on the Appellants as the said Judgment was an authentic pronouncement of law by the Competent Portuguese Court on interpretation of the Agrarian law. He submitted that the decision on point Nos.1 and 2 for determination framed by the Appellate Court ought to have been in favour of the Respondents. He submitted that the Appellants were estopped from taking action after lapse of 50 years.

9. Shri Gangal, learned Counsel for the Respondents in one of the Second Appeals has submitted that the averments made in the plaint regarding condonation of violation of conditions of Article 12 have not been specifically denied. He submitted that the findings on the plea of waiver and acquiescence recorded by the Appellate Court in favour of the Respondents were concurrent findings on issues of facts which cannot be interfered in Second Appeal under Section 100 of the Code of Civil Procedure, 1908. He submitted that there is a concurrent finding recorded on the plea of condonation which cannot be interfered with in the Second Appeal. He submitted that though under the Agrarian law no period for taking action of forfeiture is provided, the action ought to have been taken in a reasonable time and in any event period of 44 years cannot be said to be reasonable. He submitted that the Trial Court has recorded a categorical finding in the Judgment delivered in all the suits that the Predecessors of Plaintiffs have effectively carried out conditions laid down in Article 12 of the said Act. He submitted that the said finding has not been disturbed by the Appellate Court. He relied upon the various Judgments of the Apex Court in support of his submissions, a reference to which will be made at a later stage.

10. Before I deal with various submissions made by the parties, it will be necessary to refer to the relevant

provisions of Agrarian law which was admittedly in force till the date on which the Collector passed order on 30th April 1974. It is to be noted here that the Division Bench of this Court while deciding the group of Writ Petitions filed by the Predecessors of original Plaintiffs has extensively considered the provisions of the Agrarian law and observed that the said law is in pari materia with Bombay Land Revenue Code, 1879.

11. Chapter II of the Agrarian law provides for classification of State lands. Article 1 of Chapter I is pari materia with Section 37 of Bombay Land Revenue Code, 1879 or Section 20 (1) of Maharashtra Land Revenue Code, 1966 which provides that all immovable property which is not privately owned belongs to the State. Chapter II of the law provides that there can be concession in respect of the agricultural land which is intended to be used for agriculture. The Division Bench of this Court (Coram: Vaidya and Dudhia,JJ.) in the Judgment in Special Civil Application No.2080 of 1969 and the connected matters held that the contract of concession is similar to Kabulayat which is required to be executed by a grantee of land under Bombay Land Revenue Code, 1879. Chapter III provides that there cannot be any concession in respect of certain properties viz.certain category of Urban properties etc. The Article 7 of Chapter IV deals with the contract of concession which is really a contract of a grant. Article 7 reads thus :

Art.7.The Contracts of concessions are governed by the Civil Code with the following changes:

1) The rent shall always be in cash.

2) The contract shall be made administratively.

3) In case of default in payment of rent, the state has a right to produce of the land by virtue of No.1 of Article 880 of the Civil Code and subsequently to the immovable property as stipulated in No.1 of the Article 887 of the above cited Code, in lieu of the tax due to the National Revenue Department.

4) A concession holder is bound to preserve ways tracks and other existing easements; he may destroy the same only after his application to that effect has been granted by the Governor-General.

12. Article 8 deals with the payment of rent in agricultural year at the office of Revenue Department. Article 11 provides that concession holder may transfer or mortgage his useful right over the concession or burden the same with any charge or servitudes. Article 12 which is material for the controversy which reads thus :

Art.12. A contract of concession shall be rescinded without any right for indemnity (compensation) and without any formal procedure;

a) When the agricultural works have not been started within one year from the date of the contract;

b) When at the end of a period of two years from the date of the contract one fourth of the cultivable land has not been brought under regular cultivation;

c) When during every year, after the one fourth of land has been brought under cultivation

the area under cultivation has not been increased by at least one fifth of the half of the remaining area, except due to uncontrolable circumstances duly proved the remaining half being free to be reserved for irregular cultivation, pasture or have ;

d) When, the land has been conceded for building purposes, and when within one year from the date of the contract no foundation has been laid, and within three years the remaining work has not been completed save due to uncontrolable circumstances duly proved.

#1. For the purpose of the first three sub-clauses of the present Article all that has been laid down in table according to the classification of land is considered to be regular cultivation as also that of shrubs and bushes yielding produce economically planted methodically in a line keeping in between them necessary distance for their regular growth.

#2. In the cases foreseen in the sub-clauses the land which has not been brought under cultivation shall be conceded a fresh, with the necessary mutations in the original Alvara's (sanads) and a notice shall be published in the official Gazette regarding the land to be conceded.

Article 12 imposes a condition that the agricultural work must be started within one year from the date of the contract. It further provides that at the end of period of two years from the date of contract, one fourth of the cultivable land must be brought under regular cultivation. It further provides that during every year after one fourth of the land has been brought into cultivation, area of cultivation must be increased at least one fifth of the half of the area except due to uncontrolable circumstances duly proved. Article 12

thus provides that in case of breaches provided in clauses (a), (b) or (c), contract of concession can be rescinded. Clause (c) protects the concession holder from default, only in case of uncontrolable circumstances which are duly proved. It is to be noted here that no such exception is carved out to the breaches provided in Clauses (a) and (b). Even circumstances beyond the control of the concession holder will not dispense with the requirement of compliance with clauses (a) and (b) of Article 12. Article 16 is also relevant for the purpose of deciding this group of Appeals. Article 16 reads thus :

> Art.16. In case of the rescission of the contract of concession in terms of the preceding articles, the concession holder is permitted to remove all the building material from the concession within thirty days from the day he has been informed of the annulment of the contract, save when the Governor-General has made it known to the concession holder within under cultivation shall be conceded a fresh, with the necessary mutations in the original Alvara's (sanands) and a notice shall be published in the official Gazette regarding the land to be conceded.
>
> . Clause 2 of the said Article is material which provides that,
>
> #2. In the cases foreseen in the sub-clauses of (b) and (c) of the Article 12, the contract shall be rescinded only in relation to the part of uncultivated land, if the concessions holder takes upon himself to pay the entire rent originally stipulated, save for the minimum established by law.

13. The learned Counsel for the Respondents placed reliance on Article 96 of Chapter VI which reads thus :

Art.96 The lease shall not be terminated so long as he pays the rent, even in case of his death, for, in such case his heirs shall have a right to continue with the lease.

. However, the said Article may not be material as it is part of the Chapter VI and not concessions which are covered by Chapter II.

I find that Article 96 forms part of Chapter VI of the Agrarian Law which deals with leases. Therefore, the said Article will have no application to the facts of these cases.

14. At this stage, it will be necessary to refer to the Judgement of the Division Bench (Coram:Vaidya & Dudhia,JJ.) of our High Court delivered on 17th July 1973. Paragraph 11 of the said Judgment reads thus :

"11. It is thus clear that O.A. is nothing but the land Revenue Code of Dadra and Nagar Haveli and the grants or aforamentoes given to the citizens under it are similar to the grants of lands or estates conferred on the citizens under the Land Revenue Administrations in other parts of India and particularly, Bombay.

The reference to "O.A." in the said Judgment is to the Agrarian Law. Therefore, a contract of concession is really a grant which is governed by the provisions of the Agrarian law which are referred to above.

15. In the light of the legal position which is reflected from the Agrarian Law, it will be necessary to refer to the

controversy involved in the present Appeals. Reference will have to be made to the averments made in the plaints which are almost identical in every case. I have referred to plaints in Regular Civil Suit Nos.13 of 1974 and 19 of 1975. In both plaints after contending that there was a compliance with the conditions mentioned in Alwaras, it is contended that the condition of compliance was waived by Portuguese rulers. In paragraph No.9 in the plaint in Regular Civil Suit No.13 of 1974 the Respondents have stated as under :

> "9. The plaintiffs state that the predecessors of each of them complied with the term and conditions mentioned in their respective Alwara and tried to bring lands covered under the Alwara under cultivation during the Portuguese rule by putting great labour and cost. However, even inferior quality of food grains like Nagli, Kodra and Varai could not be grown efficiently on account of bad quality of the land and even the Portuguese Administration realised this difficulty and as such these conditions of bringing land under cultivation were condoned and waived by the then Portuguese Administration having regard to the fact that both economically and efficient use of the land, it was not worth while to pursue the matter further. Accordingly, the predecessors of the plaintiffs tried to raise grass which is needed for the upkeep of their cattle which in turn would be useful in cultivation of their other lands..."

Paragraph Nos.13 and 15 also contain the material averments on the basis of which the points for determination have been framed by the Appellate Court. The said paragraphs read thus:

> "13. The plaintiffs state and submit that even

raising of grass in the land coprised in their respective Alwara is said to be decultivated because the plaintiff had put in labour in getting the land cultivated with ploughs for sowing improved qualities of grass seeds. The plaintiffs submit that having regard to these facts the conditions with regard to cultivation incorporated in the Alwaras have been condoned by the Portuguese regime and as such it is not open to the present administration to take up that matter over again in regard to the alleged breach of the condition incorporated in the Alwara. The plaintiffs further state and submit that it would be utterly imprudent on their part to raise crops in this fashion, in as much as only meagre yield of inferior food grains could be obtained after huge investment and great labour. The Plaintiffs state that the legal maxim "Lex non cogit ao impossicila" applies to the facts of their respective case.

15. The plaintiffs state that and submit that the aforesaid order dated 30-4-74 is bad, illegal, void and inoperative in law. The plaintiffs state and submit that the said Article 12 as also Article 16 of the Organizacao Agraria under which the said purported order was made by the Collector of D.N.H. are not applicable and/or cannot be applied to the lands held by the respective plaintiffs under their respective Alwara had expired long back and there is nothing to show on the part of the collector or the present Administration to show that the lands in question were not brought under cultivation during the said period of 7 years. Neither the Administration nor the collector is entitled to resort to Article 12 much after the expiry of the period of 7 years from the date of the original grant by taking into consideration the present existing condition of land. The plaintiffs submit that the defendants are all estopped from relying on the provisions of the said Article 12 for resuming the suit lands mentioned in Col.7 of the table stated in para No.1 above. The plaintiffs submit that it is not open to be executive to deprive the plaintiffs of their respective properties without complying with the rules of justice and fair play...."

In so far as Suit no.19 of 2005 is concerned, it is necessary to refer to relevant paragraphs. In paragraph nos.12 and 13 the original Plaintiffs have stated thus :

> "12. The plaintiffs say that the lands shown in column 7 of the table, are dry lands entirely dependent upon the monsoon and the waggeries of weather. There are no irrigation facilities. Last year due to failure of monsoon, crops could not be raised and all the Alwara holders were permitted to postpone the payment of assessment.
>
> 13. That even raising of grass requires certain agricultural operations such as clearing of the shrubs, ploughing the same, showing the seeds of improved variety of grass and putting some manure. All these operations are agricultural operations and a mere look as the crop will not give any idea of the cultivation. The plaintiffs are raising the grass in the manner stated above and is trying to raise the best quality of grass...."

In part of the paragraph No.16 pleadings regarding acquiescence and condonation and waiver read thus :

> "16. However, the Collector of Dadra Nagar Haveli had passed orders on 5-7-74 after the land reforms had come in force, in respect of the lands held by each of the plaintiffs as shown in Col.7 of the table mentioned above. The Collector has passed the orders of rescinding the contract and the said orders were communicated to each of the plaintiffs. The plaintiffs state that the said orders are bad, illegal, void and inoperative and that the art.12 and 16; of the organizacao Agrario are not applicable and cannot be applied to the lands held by the respective plaintiffs under their respective alwaras in as much as the period of the date of grant of each Alwara had expired and there is

nothing to show on the part of the Collector to show that the lands in were not brought under cultivation during the prescribed period from the date of the grant of the Alwara,. Neither the administration nor the Collector is entitled to resort to Art.12 or 16, much after the expiry of the period of 7 years from the date of the original grant by only taking into consideration the present existing condition of the land.

. The Plaintiffs submit that the defendants are all estopped from relying on the provisions of the said article for resuming the land in question. Further the defendants predecessor viz. the Portuguese Government has acquiesced and condoned in the use of the said land during and after the period of the grant of the original Alwara and now it is not open to defendants to deprive the plaintiffs of the said land, and the Art.12 and 16 are also unconstitutional, altravires, void and inoperative, and violative of the fundamental right of the plaintiffs. The plaintiffs further states that as no guide-lines or policy is laid down or prescribed for the implementation of Art.12 and 16, the orders are arbitrary."

16. Shri Gangal had submitted that there is no specific denial of the contention of waiver. I find from the written statement on record that there are denials in written statement in R.C.S.no.13 of 1974. There is a contention that conditions of Agrarian Law were neither condoned nor waived.

There is also a denial of all contentions regarding waiver.

17. It is to be seen here that in so far as Trial Court is concerned, there is no issue framed on the basis of the contention of acquiescence. Issue No.3 reads thus :

"3. Whether the Plaintiffs prove that the

conditions attached to the Alwara of each of the Plaintiffs were either fulfilled or condoned during the Portuguese Regime ?"

Issue No.4 is based on the plea of waiver which reads thus :

"4. Whether they further prove that there is waiver of the conditions on the part of the Portuguese Administration as such the defendants are estopped from taking any action in respect of the alleged breach of the Alwara ?"

It is necessary to refer to the findings recorded by the Trial Court in so far as Issue No.3 and 4 are concerned. The trial Court has referred to the oral evidence and thereafter proceeded to consider the Judgment of the Supreme Court at Lisbon which is at Exh.51. The part of the Judgment of Lisbon Court relied upon by the Trial Court is as under :

. "Since after the end of seven years the reversion was not ordered to be effected it is because the lessee effectively carried out all the conditions laid down in the cited article 12, and as such no reversion can take place even if after this the lots remain partly or totally uncultivated. If the lands had not been brought under cultivation in due time and in a required manner the order for reversion should have been effected in 1930 and not in 1952."

The Trial Court referred to the case made out in the deposition of one of the Plaintiffs that in the year 1949-1950 he and other Alwara land holders met the then Administrator and told him that the lands were useless. The said administrator realised their difficulties and asked them to

continue to be in possession of the land and pay the assessment. The Trial Court has also noted that the said assertion is not made when reply was filed to the Collector's show cause notice. Reading of paragraph No.6 of the Judgment of the Trial Court shows that there is no specific finding recorded regarding waiver. On the contrary, what the Trial Court has observed is that since no action was taken by the Portuguese Government at the end of seven years and nothing was done till the action was taken by the Collector, there is a ground to support the contentions of the Plaintiffs that their predecessors have complied with the terms and conditions mentioned in their respective Alwara and Portuguese Government condoned the conditions laid down under Article 12. At the end of paragraph after referring to the Judgment of the Lisbon Court, the learned Trial Judge proceeded to hold that the predecessors of Plaintiffs have effectively carried out all the conditions laid down under Article 12 of the Agrarian law and therefore no action can be taken. While dealing with issues of condonation and waiver, without recording any finding, a finding is recorded that the Plaintiffs have effectively carried out all the conditions laid down in clause 12. The said finding is repeated while deciding Issue No.6.

In paragraph No.6 the Trial Court has considered the Issue Nos.3 and 4. The said paragraph reads thus :

> . "Relying on this Judgment also, I hold that since after the end of seven years the reversion was not ordered to be effected, it is because the predecessors of the

> plaintiffs had effectively carried out all the conditions laid down in the Article 12 of the Organizacao Agraria no reversion can now take place even if some land has remained uncultivated. I therefore, answer issue Nos.3 and 4 accordingly."

The issue Nos.3 and 4 are the only issues dealing with plea of condonation It is to be noted that Issue Nos.1 and 2 are regarding nature of rights conferred on holders of Alwara.

18. The Appellate Court has framed four points for determination in the Judgment which read thus :

> i) It is open to the Respondents to contend that the lands were not cultivable at the time of grant of the contract concession ?
>
> ii) Is it open to them to plead impossibility of compliance of the material terms of the contract of concession ?
>
> iii) Do the Appellants show that the Lower Court erred in upholding the plea of condonation of violation of the material of the contract of concession during Portuguese Regime ?
>
> iv) Do they also show that the Lower Court was wrong in accepting the plea of waiver of violation of the material conditions of the contract of concession during Portuguese Regime ?

19. Point No.3 is on condonation of violation of the material conditions of contract of concession. Point No.4 is regarding plea of waiver. In paragraph No.43 of its Judgment, the Appellate Court has recorded the submissions of the learned Counsel for the Plaintiffs. The said submissions read thus :

"43. In answer it was pleaded by Mr.Desai for the respondents that failure on the part of the appellants to take action against the holders of Alwaras implied that the lands were uncultivable. I am not at all impressed by the submission because inaction on the part of the Government for taking action for violation of the material conditions of the grant would not necessarily lead to the inference that the lands were uncultivable. It may be due to variety of reasons but it would not lead to the conclusion legitimately that the lands were not cultivable and hence no action has been taken for violation of the conditions of the lands by the Alwara holders."

In fact in paragraph No.45 the Appellate Court has held that the contention of the Respondents was that the conditions provided under Article 12 were impossible of compliance. The paragraph No.46 of the Appellate Court Judgment again shows that submission of the Respondent was that material terms of the grant were impossible of compliance. A finding was recorded that,

"46. However, it was not open to the respondents to contend after having accepted the grant or the contract of concession that the material term thereof was impossible of compliance particularly when the lands under Alwara were classified as cultivable lands and were accepted by them as such. The fact that the respondents-plaintiffs never raised this plea up till now further reinforced the view that the lands were cultivable and that the plea of impossibility of compliance of those conditions was raised for the first time in defence to the impugned order mainly for the purpose of avoiding the enforcement of that order. I do not think that it would be open to the respondents to plead impossibility of the conditions laid down in Article 12 of the O.A. which governed that grant under the respective Alwaras. Hence, the respondents cannot set up the plea of impossibility of compliance of those

conditions."

Thus, at least in the Appellate Court the submission on behalf of the original Plaintiffs proceeded on the basis that there was no compliance with the conditions of concession.

20. At this stage it will be necessary to refer to the submission of Mr.Gangal for the Respondents that a categorical finding recorded by the trial Court that the Plaintiffs have complied with the conditions incorporated in Article 12 has not been set aside by the Appellate Court. In this connection, it is necessary to refer to the averments made in the plaint and the depositions of various witnesses examined on behalf of the Plaintiffs. The averments made in the plaint show that the pleadings is of condonation of defaults committed by the original Plaintiffs. A specific plea is taken that the predecessors of the Administration of Dadra and Nagar Haveli i.e. the Portuguese Government has acquiesced and condoned the defaults during and after the period of grant. In R.C.S.No.13 of 1974 in paragraph No.9 of the plaint, it is stated that the predecessors of the Respondents tried to bring the lands under Alwara under cultivation by paying labour and by incurring costs. It is stated that due to inferior quality of land even food grains of inferior quality like Kodra, Nagli and warai could not be grown efficiently. The perusal of the pleadings and depositions of the witnesses examined on behalf of the Plaintiffs shows that

no case is made out that there was a compliance with the conditions incorporated in Article 12 of the Agrarian law. Looking to the submissions which were made before the Appellate court and the pleadings and evidence it was not at all necessary for the Appellate Court to specially set aside the said finding of the Trial Court. It was obvious that before the Appellate Court the said finding which in contrary to their own case was not supported by the original Plaintiffs.

21. As stated earlier, the Trial Court has framed issues only on the basis of waiver and condonation. The Appellate Court while dealing with the point for determination framed on condonation has recorded a categorical finding in paragraph No.50 that describing inaction on the part of the State Government of not rescinding contract of concession under Article 12 for such a long time would be acquiescence and not condonation. The issues framed by the Trial Court and the points framed by the Appellate Court are not on the specific contention of acquiescence. However, the Appellate Court has proceeded to deal with the case as if a specific contention was raised regarding acquiescence on the part of the authorities. In paragraph No.51 of the Judgment of the Appellate Court it is held that from long latches, acquiescence can be inferred. In paragraph No.52 the Appellate court reiterated that there was a breach of material conditions of Article 12 but no legal action was taken of

rescission of contract for almost 40 years. The Appellate Court thus proceeded to hold that inordinate delay leads to a legitimate inference of implied consent to the irregular act or violation of the material conditions of the Alwaras in question. In the Trial Court, issue on the basis of plea of acquiescence was not framed. There is neither an issue on the said aspect nor there is a finding on the said aspect by the Trial Court. In my view, the Appellate Court could not have considered the plea of acquiescence for these reasons. However, as the Appellate Court has dealt with the plea of acquiescence and as the Second Appeals are very old, I have considered the merits of the said plea also.

22. In some of the suits there is an assertion only in one sentence that Portuguese Government has acquiesced and condoned the defaults of Alwara holders in use of the said lands after the grant of the original Alwara. In so far as Acquiescence is concerned, it will be necessary to refer to the decision of the Apex Court reported in (2002) 5 S.C.C. page No.90 (P.John Chandy And Co.(P) Ltd. vs. John P.Thomas). In the said Judgment the Apex Court was considering the effect of inaction of landlord under the provisions of Kerala Buildings (Lease and Rent Control) Act, 1965 to take action of eviction against the tenant. The question before the Apex Court was as to what was the effect of inaction for a period of 32 years. The Apex Court held that inaction in every case does not necessarily lead to an

inference of implied consent or acquiescence. The Apex Court referred to Words and Phrases Legally Defined, Vol.1, 3rd Edition, page No.27 which read thus :

> . "Mere inactivity on the part of a defendant is not to be construed as acquiescence in delay by the plaintiff. "Sleeping dogs, in the form of sleeping plaintiffs, need not be aroused by defendants from their slumbers' (per Roskill, L.J. in Compagnie Francaise de Television V. Thorn Consumer Electronics Ltd. RCP at 739 and Bremer Vulkan Schiffbau And Maschinenfabrik V. South India Shipping Corpn. All ER at 198 per Donaldson,J."
>
> . It may also answer the observation of the Appellate court that the landlord by inaction is to be taken to have waived his right to take any action against the tenant.

The Apex Court further held that,

> . The difference which is pointed out between the two in this context is that 'consent' involves some affirmative acceptance, not merely a standing-by and absence of objection. The affirmative acceptance may be in writing, which is the clearest obviously; it may be oral; it may be conceivably even be by conduct, such as nodding the head in specific way in response to an express request for consent..."

The Apex Court held that the consent involves some affirmative acceptance and not merely a standing by and absence of objection and the affirmative acceptance may be in writing or it may be oral. The Apex Court held that acquiescence exists when there is something more than inaction or lack of

initiative. On this point it will be necessary to refer to the Judgment of the Apex Court relied upon by Shri Agarwal in case of Power Control Appliances and others vs. Sumeet Machines Pvt. Ltd. reported in 1994 (2) SCC 448 where the Supreme Court has discussed the legal meaning of acquiescence. The Apex Court has quoted certain relevant portions of the Halbury's Laws of England with approval. It is observed that delay and simply delay will not amount to acquiescence which will have the effect of depriving a person of his right. In the context of the law laid down by the Apex Court, the finding of the Appellate Court will have to be examined. As stated earlier, the finding on the issue of acquiescence is not a concurrent finding as there was no issue framed on the acquiescence by the Trial Court and there is no specific finding recorded by the Trial Court on that aspect. In paragraph No.52 of its Judgment, the Appellate Court held that inordinate delay leads to legitimate inference of implied consent to the irregular Act or violation of the material conditions of Alwara in question. Even in paragraph No.53 of the Judgment, the Appellate Court relied upon the inference of implied consent which can be drawn only on the basis of inordinate delay. As held by the Apex Court mere inordinate delay does not lead to inference of implied consent or acquiescence. There is no finding recorded by the Appellate Court that acquiescence exists because there is something more than inaction or lack of initiative. The finding recorded by the Appellate Court is at highest of long inaction. Such long

inaction will not amount to abandonment of right. Only on the basis of a finding that there was a long delay in taking action, inference of acquiescence could not have been drawn. In my view, the finding recorded by the Appellate Court on the issue of acquiescence will have to be set aside both on merits and on the ground that the plea of acquiescence could not have been considered for the first time in the Appeal.

23. The other issue decided by the Appellate Court against the Appellants is the issue of waiver. The learned Counsel appearing for the Respondents submitted that the finding given by the Courts below on the issue of waiver are essentially findings of fact which cannot be interfered with in a limited jurisdiction of Section 100 of the said Code.

24. There is no absolute prohibition against interfering with the findings of fact in a the Second Appeal under Section 100 of Code of Civil Procedure, 1908. As held by the Apex Court in a Judgment reported in (1996) 8 S.C.C. page No.365 (D.S.Thimmappa Vs. Siddaramakka), where the first Appellate Court failed to draw the proper inference and to apply law in proper perspective to the proved facts, the High Court in Second Appeal was justified in drawing proper inference from the such proved facts and the said course adopted will not amount to appreciation of evidence in Second Appeal.

25. In so far as the Trial Court is concerned, I have already

adverted to the finding recorded by the Trial Court on the issue of waiver. Both the courts below while dealing with the issue of waiver have heavily relied upon the Judgment of the Supreme Court at Lisbon which is at Exh.51. Submissions in detail have been made before me by the Counsel appearing for the parties on the question of binding efficacy of the said Judgment. English translation of the said Judgment is at Exh.51 which is repeatedly read before me by the Counsel for the parties. It must be noted here that in the English Translation which is placed on record, the number of sentences in the said Judgment are incomplete. I attempted to read the Judgment in the manner the learned Counsel for the Respondents wanted me to read it. However, after many attempts I found it impossible to come to the conclusion that the said Judgment lays down a particular ratio which can be held to be binding. In view of this position, it is really futile to go into the question relating to binding efficacy. It is, however, pertinent to note that the Trial Court has relied upon a particular portion of the said Judgment as quoted in paragraph No.17 of this Judgement. From the copy of English translation which is handed over to me I found that the said portion of the Judgment quoted by the trial Court forms part of paragraph No.C on page No.2 of the English Translation thereof. From whatever I can gather from the Judgment, it is obvious that the first part of paragraph No.C up to first two lines of page No.3 of the translation of Judgment is nothing but re-production of the contentions raised by the

Appellants/Petitioners before the Court at Lisbon. However, the Trial Court has reproduced the said portion, as if it was the finding or ratio of the Judgment of the Court at Lisbon.

26. Shri Gangal, learned Counsel for the Respondent has taken me through the entire translation of the said Judgment. In fairness to Shri Gangal, even he has not contended that what is stated in first part of the paragraph No.C is the ratio of the Judgment. Relying upon the said portion of the Judgment of the Court at Lisbon, all that the Trial Court has stated is that at the end of period of seven years reversion was not ordered to be effected because the the predecessors of the Plaintiffs had effectively carried out all the conditions laid down in Article 12 of the Agrarian law and no reversion can be ordered of the entire land even if some part of it has remained uncultivated. The portion of the Judgment of the Lisbon Court on which reliance is placed by the trial Court cannot by any stretch of imagination help the Respondents in advancing the plea of waiver. Apart from relying upon the said paragraph of the Judgment of Lisbon Court, while dealing with the issue No.7, there is no independent finding recorded by the trial Court so far as waiver is concerned.

27. The Appellate Court has referred to the Judgment of the Lisbon Court. All that the Appellate Court said after referring to the said Judgment of the Lisbon Court in paragraph No.62 which reads thus :

"62. The second ground on which the plea of waiver was accepted by the lower Court was the judgment of the Supreme Court where in on almost similar facts the right of rescission of a contract by the Government was negatived by the Court. The copy of the judgment is at Exh.51. It is held therein that since after the end of seven years the reversion was not ordered to be effected it is because the lessee effectively carried out all the conditions laid won in the cited Article 12 and as such no reversion can take place even if after this the lots remain partly or totally uncultivated. It is further observed therein in due time and in a required manner the order for reversion should have been effected in 1930 (as the concession is dated 17-5-1923 therein) and not in 1962 after the lapse of about 29 years. The court negatived contention of the Government that the right of rescission provided in Article 12 of the O.A. does not expire at a marked period and the Government can make it valid at all times. No doubt there is another and more substantial ground on which the appeal had succeeded and it was that in that case on verification it was found that out of the lands granted under the concession 12 hectares of land was cultivated whereas the order of rescission was in respect of the entire land including the 12 hectares which was cultivated. It was patently erroneous in view of the provisions of para 2 of Article 16 of the O.A. It was, however, submitted by the Respondents that being a judgment of the Supreme court of Lisbon it is binding on this Court and the view expressed herein will have to be followed by it. The view expressed therein was sought to be distinguished by appellants' advocate on the ground that the plea of condonation or waiver was not expressly dealt therein. I am, however, not impressed by this plea because though the doctrine of waiver or acquiescence has not been expressly referred to therein yet the view expressed in the judgment is based on those doctrines. When court held that the right of rescission could be exercised on the expiry of the period of seven years and not after lapse of 29 years it clearly implied that there was

> an infringement of right and its acquiescence, i.e. implied consent on the part of the Administration in the violation of the material conditions of Article 12 of the O.A. on account of its failure to take legal action when the right of rescission was vested in it or within reasonable time thereafter."

27. It is not possible to accept on plain reading of the Judgment of the Lisbon Court that it is laid down as a ratio or a proposition of law that the right of rescission of the concession under Article 12 could not be exercised after lapse of 29 years and that if there was delay of 29 years it clearly implies that there was acquiescence of infringement of right and implied consent on the part of administration of the violation of material conditions of Article 12. If these are the findings recorded by the Courts below on the plea of waiver, it is very difficult to say that there are concurrent findings on the issue of waiver in its true sense. The sum and substance of the findings of the Courts below on facts is that there is a long inaction in exercise the statutory powers. There is no finding that there is something on record which shows something more than mere inaction on the part of Authorities. A reference will have to be made to the Judgment of the Apex Court reported in A.I.R. 1959 S.C. page 689 (Waman Shriniwas Kini vs. Ratilal Bhagwandas and Co.). It will be necessary to refer to the relevant portion of the decision of the Apex Court which read thus :

. "Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied. Chitty on Constract 21st Ed.p.381 Stackhouse V. Barnston, (1805) 10 Ves 453, 466: 32 ER 921. But an agreement to waive an illegality is void on grounds of public policy and would be enforceable..."

Further reference will have to be made to the Judgment of the Division Bench of this Court reported in 76 Bombay Law Reporter page No.769 paragraph No.87 (Ebrahimbhai Abdul Kayum Vs. State of Maharashtra). The Division Bench held that the waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights. It may be express or implied. When waiver is sought to be relied upon by a party, it is for that party to establish the circumstances under which he wants inference of either express or implied waiver to be drawn. Shri Agrawal has placed reliance on another Judgment of the Apex Court reported in A.I.R. 1977 S.C. page No.1691 (Shri Krishna Das Tikara Vs. State of M.P.). In the said decision, the Apex Court has quoted with approval of its earlier Judgment reported in A.I.R. 1976 S.C. page No.2237 (Exercise Commr. Vs. Ram Kumar). Paragraph No.7 of the said Judgment read thus :

> "7. The plea of waiver when it is pressed against the government has an uphill journey to make for success. Dealing with the plea of estoppel against the State, this Court recently held in (Exercise Commer. V. Ram Kumar, 1976 Supp SCR 532 : (AIR 1976 SC 2237) : 'It is now well settled by a catena of decisions that there can be no questions of estoppel against the government in the exercise of its legislative, sovereign or executive powers'. Generally a State is not subject to an estoppel to the same extent as an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. Therefore as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity (American Jurisprudence, II Edn., Paragraph 123 p.783). It is enough for our purposes in the present case to say that there is no case made out of intentional relinquishment of a known right by the State Government. In absence of such voluntary and intentional abandonment of a known advantage or benefit, waiver cannot be postulated. In this view, we reject the plea of waiver..."

Apart from affirming well known principle that there can be no question of estoppel against the Government in exercise legislative, sovereign or executive power, the Apex Court held that the plea of waiver when it is pressed against the Government has an uphill journey to make for success. The Apex Court held that the for establishing the plea of waiver, case of intentional relinquishment of a known right by the Government will have to be made out and in absence of such voluntary and intentional abandonment of a known advantage, waiver cannot be postulated. Another decision of the Supreme Court on this point is reported in A.I.R. 1989 S.C. page

No.1834 (Provash Chandra Dalui Vs. Bishwanath Banerjee). The paragraph No.21 of the said Judgment which read thus :

> "21. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of relinquishment of such right. It means the forsaking the assertion of a right at the proper opportunity. The first respondent filed suit at the proper opportunity after the land was transferred to him, and no covenant to treat the appellants as Thika tenants could be shown to have run with the land waiver is distinct from estoppel in that in waiver the essential element is actual intent to abandon or surrender right, while in estoppel such intent is immaterial."

The Apex Court has emphasized that in waiver, there is an existence of intention to abandonment or surrender of right while in estoppel such intention is immaterial. I am not going into the question of estoppel as it is settled that there cannot be estoppel against the exercise of statutory power. But what is to be seen here is that intention is an essential element of waiver.

28. At this stage Shri Kankaria, learned Counsel for the Respondents in some of the Appeals has invited my attention to deposition of Witness No.1 for Plaintiffs in R.C.S.No.13 of 1974. The said witness has stated that he had made representation to the then Portuguese Administration stating that the land is useless and nothing can be grown in it except

grass and he was asked to continue to grow the grass. It is stated that an attempt was made to get the copy of the order passed by the Portuguese Government but copy was not available. He also relied upon the deposition of a witness examined on behalf of the Plaintiff in R.C.S.No.14 of 1974. There is a reference in the said deposition to meeting of some of the Plaintiffs with the Administrator in Portuguese Regime who had allegedly told the said persons to remain in possession of Alwara and do whatever they could do. He has invited my attention to the said portion of the deposition in connection with plea of waiver. It is to be seen here that on the basis of the said depositions, there is no finding of fact recorded in favour of the Plaintiffs that any such representative met either the Administrator or any other Officer of the said Administration. There is nothing on record to show that Plaintiffs in R.C.S.No.13 of 1974 produced any particulars such as date of representation and date of order passed by the Portuguese Government. I could not find reference to any notice given by the Plaintiffs to the Appellants to produce the record pertaining to the representation allegedly made by the Plaintiffs to the Portuguese Government and reply or order issued thereon by the said Portuguese Government. If the original Plaintiffs were relying upon the said decision, even the first Appeal, a submission could have been made before the first Appellate Court to frame the point for determination on the said aspect and to record a finding thereon. In the Appellate Court

Judgment emphasis appears to be on inaction for a long period of time and impossibility of compliance of the material terms of the contract of concessions.

29. The law laid down by the Apex Court and this Court will have to be applied to the proved facts. As pointed out earlier, the only proved fact is inaction for a long time on the part of the Respondents or their predecessors. A mere inaction in absence of any intention is not sufficient to prove the plea of waiver. Therefore, legal inference drawn by the Appellate Court on the basis of the admitted facts or on the basis of findings of fact was totally contrary to the law laid down by the Apex Court. The Appellate Court has upheld the decree passed by the trial Court by accepting the plea of waiver and acquiescence and I find that for various reasons recorded in earlier paragraphs the findings on both the aspects are totally unsustainable.

30. I will now proceed to consider the submissions made by the Shri V.A.Gangal, learned Counsel for the Respondents which strictly could not have been made for the first time in the Second Appeal. Shri Gangal, learned Counsel for the Respondents has mainly stressed on failure of the administration to exercise statutory power within a reasonable time. He has relied upon the Judgment of the Apex Court reported in A.I.R. 1983 S.C. page No.1239 (Mansaram Vs. S.P.Pathak). The Apex Court while dealing with the power or

the authority of eviction under the C.P. and Berar Letting of Houses and Rent Control Order (1949) held that when power is conferred by a statute it has to be exercised in a reasonable manner. The Apex Court held that exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time. He has also referred to the Judgment of the Apex Court reported in A.I.R. 1969 S.C. page No.1297 (State of Gujarat Vs. Patel Raghav Natha and others) and Judgemnt of Division Bench of this Court reported in 2003 (1) Mh.L.J. page No.604 (Automotive Reseach Association of India Vs. State of Maharashtra & Ors.) in support of his submissions. Perusal of the Judgments of both the Courts below show that there was no challenge to the impugned order of Collector on the ground that the power has been unreasonably exercised as there was inordinate delay in exercising the power. The proposition of law canvassed by Shri Gangal cannot be disputed. However, what is the reasonable time is always a question of fact. If what is the reasonable time was to be established as a question of fact then surely both the parties must get opportunity to lead evidence. As this plea was not raised in the Courts below, there was no opportunity for the Appellants to meet the said contention. Therefore, in my view, the said submission of Shri Gangal cannot be considered in Second Appeal.

30. Shri Kankaria, learned Counsel for Respondents in some of the Second Appeals has taken me through the impugned order of

the Collector. He submitted that there was non-application of mind while passing the said order. He pointed out that the order was passed hurriedly as the Dadra and Nagar Haveli Land Reforms Regulation, 1971 was to come into force with effect from 1st May 1974. He pointed out that there was no proper enquiry made by the Collector. He also brought to my notice that certain Officers were appointed to inspect the lands and they were asked to submit inspection reports which were not placed on record. He submitted that the order of Collector itself shows that each individual land was not inspected. Therefore, there could not be finding recorded regarding breach of Article 12 of the Agrarian Law. He has extensively referred to deposition of the witnesses examined on behalf of the Appellants which show that there was no inspection of individual lands subject matter of the enquiry. The said submissions are prima facie very attractive but I find that neither in the Trial Court nor in the Appellate Court the submissions which are made by Shri Kankaria are urged. It is very difficult to consider the merits of the said submissions for the first time in the Second Appeal. If findings on Issue recorded by the Trial Court are perused, it is very clear that all these submissions were not made on behalf of the original Plaintiffs. If submissions were really made before the Trial Court regarding arbitrariness or non-application of mind by the Collector, surely recourse could have been taken to Order XLI Rule 22 of the Code of Civil Procedure, 1908 in the First Appeal . Even, that has not been done. Unfortunately for the

original Plaintiffs I find that only submission made in the First Appellate court apart from waiver, condonation and acquiescence was that the conditions imposed by Article 12 could not be complied with due to inferior quality of lands.

31. In this view of the matter, for the reasons set out in the earlier paragraphs I find that the Judgments of the Courts below are unsustainable and same deserve to be quashed and set aside. Accordingly, the Appeals are allowed. Impugned Judgments and decrees are set aside. The suits filed by the Respondents stand dismissed. No order as to costs throughout.

32. Shri Kankaria and Shri Gangal, learned Counsel appearing for the Respondents at this stage submitted that the Appellants desire to move the higher court and considering the number of matters and number of litigants involved sufficiently long time may be required to make preparation for approaching the Apex Court for appropriate relief. They requested that the Respondents should not be dis-possessed on the basis of impugned order of the Collector for sufficiently long time. The said request is opposed by the Counsel appearing for the Appellants.

33. Considering the fact that the transcription of Judgment will take long time due to heavy pressure of work on the Court Stenographers, I direct that the Respondents shall not be dis-possessed on the basis of the impugned orders passed by

the Collector till 18th July 2005.

34. Certified copy is expedited.

36. Parties to act upon an authenticated copy of this order.

Judge.